

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA

vs.

DANIEL ORTEGA (5)

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Case No. 4:04cr185
(Judge Schell)

REPORT AND RECOMMENDATION **OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on May 16, 2013, to determine whether Defendant violated his supervised release. Defendant was represented by Denise Benson. The Government was represented by Maureen Smith.

On January 9, 2006, Defendant was sentenced by the Honorable Richard A. Schell to sixty (60) months' custody followed by four (4) years of supervised release for the offense of Conspiracy to Manufacture, Distribute or Possess with Intent to Manufacture, Distribute or Dispense Methamphetamine. On April 24, 2009, Defendant completed his period of imprisonment and began service of his supervised term.

On February 14, 2013, the U.S. Probation Officer executed a Petition for Warrant for Offender Under Supervision. The petition asserted that Defendant violated several mandatory, standard, and special conditions. Violation allegation one, four, five, six, and seven were dismissed by the Government. The petition also alleged violation of the following conditions: (1) the defendant shall refrain from any unlawful use of a controlled substance; and (2) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substances, except as prescribed by a

physician.

The petition alleges that Defendant committed the following acts with regard to the remaining violations: (1) On January 3, 2011, Defendant submitted a urine specimen which tested positive for methamphetamine. On January 10, 2011, Defendant admitted in writing to using methamphetamine on January 2, 2011; and (2) On February 13, 2012, Defendant submitted a urine specimen which tested positive for methamphetamine. On March 1, 2012, Defendant admitted in writing to using methamphetamine.

Prior to the Government putting on its case, Defendant entered a plea of true to the remaining violations.

RECOMMENDATION

The Court recommends that the District Judge revoke Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of nine (9) months with no supervised release to follow. It is also recommended that Defendant be housed in the Bureau of Prisons' Fort Worth, Texas facility.

After the Court announced the recommended sentence, Defendant executed the consent to revocation of supervised release and waiver of right to be present and speak at sentencing. Defendant and the Government also waived their right to file objections.

SIGNED this 31st day of May, 2013.


AMOS L. MAZZANT
UNITED STATES MAGISTRATE JUDGE